County of Los Angeles
CHIEF EXECUTIVE OFFICE
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
http://ceo.lacounty.gov

WILLIAM T FUJIOKA
Chief Executive Officer

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To: Supervisor Yvonne B. Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

WASHINGTON, D.C. UPDATE

American Housing Rescue and Foreclosure Prevention Act Implementation Update

The American Housing Rescue and Foreclosure Prevention Act of 2008 (H.R. 3221), which was enacted on July 30, 2008, includes $3.92 billion for one-time grants to state and local governments for the redevelopment of abandoned and foreclosed homes in response to the foreclosure crisis. The County's Community Development Commission (CDC), Washington, D.C. representatives, and this office are working with an ad hoc coalition of large cities and counties to monitor and provide input to the Department of Housing and Urban Development (HUD) on its development of the program's allocation formula and guidelines. This is the same coalition with which we pursued the County's positions on the legislation to support the program's creation, and provide direct funding to large counties, flexibility over the use of funds, and sufficient funding for local program administration. There also is a consensus among local jurisdictions, including the County, in the coalition on how the program should be implemented.

Major program implementation issues include the following:

Allocation Formula

H.R. 3221 requires HUD to establish a formula to allocate funds to state and local governments with the greatest need, based on the number and percentage of home foreclosures, subprime mortgage loans, and homes in default or delinquency.

Key allocation formula issues include:

Data Sources: Establishing an allocation formula is complicated by the fact that nationwide data is not collected by public agencies on home foreclosures, subprime loans, and delinquent loans, and HUD is reluctant to use privately collected data because it believes that they are not available for every community--and are less transparent. New York City and County staff have taken the lead within the coalition in researching potential data sources to use to allocate funds. Based on this research to date, it appears that the private data sources on the allocation criteria are accurate enough to use to allocate funds. In addition, their gaps in geographical coverage appear to be limited to rural communities, which are too small to qualify for direct funding.

Direct Funding to Local Governments: Some HUD officials have indicated that they may allocate all funds to state governments, leaving it up to states to allocate any funding to local governments. While allocating funds through states would be simpler for HUD, it is inconsistent with the statutory language, which provides for direct grants to state <u>and</u> local governments. Also, nothing in the bill's legislative history suggests that Congress, instead, intended that only states receive direct grants. Direct funding to large counties and cities has been a top priority for the coalition, both before and after the bill's enactment.

Weighting of Allocation Factors: H.R. 3221 gives HUD the discretion to determine the relative weight given to the number and percentage of foreclosed homes, subprime loans, and delinquent loans. The consensus within the ad hoc coalition is that far greater weight should be given to the number rather than percentage of foreclosures, subprime loans, and delinquent loans. Percentage-based allocations would provide small jurisdictions with far more funding per foreclosure than large jurisdictions, such as California and the County, even though large jurisdictions may have neighborhoods with higher foreclosure rates.

Small state minimum (SSM) requirement: The bill requires that each state receive no less than 0.5 percent of total funding. There is a consensus within the coalition that this statutory SSM requirement should be computed, counting total combined funding to state and local governments in a state rather than solely funding to state government. Otherwise, less funding would be available for allocation to states and localities with greater needs.

<u>Other Program Issues</u>

Most of the other program implementation issues of concern to local governments, including the County, involve local flexibility over the use of funds.

Other program implementation issues include:

Eligible Uses of Funds: By statute, the eligible use of funds are limited to establishing financing mechanisms for purchase and redevelopment of foreclosed homes; buying and rehabilitating abandoned or foreclosed homes, establishing land banks for foreclosed homes, demolishing blighted structures, and redeveloping demolished or vacant properties. There is consensus within the coalition that HUD should maximize local flexibility by broadly defining eligible uses.

Low Income Targeting Requirement: H.R. 3221 requires at least 25 percent of total funding to be used to buy and redevelop foreclosed homes that will be used to house individuals or families whose incomes do not exceed 50 percent of an area's median income. There is consensus within the coalition that HUD should recognize that this targeting requirement will be difficult to meet in high-cost urban areas, and, therefore, provide for flexibility in how it is met, including "good faith effort" waivers.

Geographical Area Targeting Requirement: There also is a statutory requirement that, in distributing funds, state and local grantees must give priority to areas with the greatest need, including areas, which have the highest percentage of home foreclosures and homes financed by subprime loans and are likely to face a significant rise in the rate of home foreclosures. Program guidelines to implement this requirement will be significantly affected by HUD's decisions on what data sources will be used to allocate funds based on the statutory need criteria and on whether funds will be allocated directly to only state governments. Therefore, the County and others in the coalition have been focusing on allocation formula issues, especially the issue of direct funding to local governments.

18-Month Time Limitation: There is a statutory requirement that state and local governments "use" their grants within 18 months after receiving them. The consensus within the coalition is that "use" should be defined as the commitment, <u>not</u> expenditure, of funds. It would be extremely difficult to spend all funds within 18 months.

Administrative Costs: H.R. 3221 neither defines administrative costs nor specifies the percentage of funds that may be spent on administration. However, the bill does include language stating that, unless otherwise provided in the new law, program funds shall be treated as if they were Community Development Block Grant (CDBG) funds under the Housing and Community Development Act, which allows grantees to use up to 20 percent of their grant on administrative costs. The consensus within the local coalition is that HUD should allow up to 20 percent of the new grant to be spent on administration, consistent with CDBG.

It is important to note that the statutory language on this one-time grant funding is not as detailed as for CDBG and other ongoing grant programs for which the enabling legislation more clearly specifies how funds shall be allocated and defines key terms. Therefore, there is far less clarity on how the new program will be implemented and on how much funding each state or local jurisdiction will receive. Moreover, because the bill requires HUD to allocate funds by the end of October (within 90 days of the bill's enactment) and requires grantees to use funds within 18 months, it is extremely unlikely that HUD will issue program regulations through a formal rulemaking process. Therefore, there may not be an opportunity for the public to review and comment on the allocation formula and program guidelines before they are finalized.

County staff and Washington, D.C. representatives will continue to work with the local government coalition on program implementation issues. In addition, we will work closely with the County's Congressional delegation, especially Representative Waters, who chairs the House Financial Services Subcommittee with jurisdiction over this program.

We will continue to keep you advised.

WTF:GK
MAL:MT:ja

c: All Department Heads
Legislative Strategist